

Executive Summary – Enforcement Matter – Case No. 45360

MCLANE COMPANY, INC.

RN101616779 and RN101435717

Docket No. 2012-2213-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

No

Location(s) Where Violation(s) Occurred:

McLane Southwest, RN101616779, ("Facility 1"), located at 2828 Industrial Boulevard, Temple, Bell County; and

McLane Southwest Center Street, RN101435717, ("Facility 2"), located at 3010 Center Street, Temple, Bell County

Type of Operation:

Fleet refueling facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: April 12, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,259

Amount Deferred for Expedited Settlement: \$2,651

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$10,608

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications (RN101616779):

Person/CN - High

Site/RN - Unclassified

Compliance History Classifications (RN101435717):

Person/CN - High

Site/RN - High

Major Source: Yes and No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 45360
MCLANE COMPANY, INC.
RN101616779 and RN101435717
Docket No. 2012-2213-PST-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 26, 2012

Date(s) of NOE(s): October 17, 2012 and October 31, 2012

Violation Information

At Facility 1:

1. Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
2. Failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the annual line leak detector and piping tightness tests were not conducted [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].

At Facility 2:

1. Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures:

- a. Implemented a release detection method for the USTs at Facility 1 on December 31, 2012 and Facility 2 on November 7, 2012;
- b. Conducted the required annual piping tightness and line leak detector tests at Facility 1 on November 6, 2012, with passing results; and
- c. Began maintaining UST records at Facility 1 on January 28, 2013.

Technical Requirements:

N/A

**Executive Summary – Enforcement Matter – Case No. 45360
MCLANE COMPANY, INC.
RN101616779 and RN101435717
Docket No. 2012-2213-PST-E**

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Had Darling, Enforcement Division,
Enforcement Team 7, MC 128, (512) 239-2570; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Scott Braden, Division President, MCLANE COMPANY, INC., P.O. Box
6115, Temple, Texas 76503
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES

Assigned
PCW

5-Nov-2012
15-Feb-2013

Screening 15-Nov-2012

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent MCLANE COMPANY, INC. (Facility 1)

Reg. Ent. Ref. No. RN101616779

Facility/Site Region 9-Waco

Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No. 45360

Docket No. 2012-2213-PST-E

Media Program(s) Petroleum Storage Tank

Multi-Media

No. of Violations 2

Order Type 1660

Government/Non-Profit No

Enf. Coordinator Had Darling

EC's Team Enforcement Team 7

Admin. Penalty \$ Limit Minimum

\$0

Maximum

\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$11,250

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

-10.0% Reduction

Subtotals 2, 3, & 7 -\$1,125

Notes

Recommended reduction due to high performer classification.

Culpability

No

0.0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments

Subtotal 5 \$0

Economic Benefit

0.0% Enhancement*

Subtotal 6 \$0

Total EB Amounts \$207

Approx. Cost of Compliance \$2,118

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$10,125

OTHER FACTORS AS JUSTICE MAY REQUIRE

1.3%

Adjustment \$134

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.

Final Penalty Amount \$10,259

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$10,259

DEFERRAL

20.0%

Reduction

Adjustment -\$2,051

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$8,208

Screening Date 15-Nov-2012

Docket No. 2012-2213-PST-E

PCW

Respondent MCLANE COMPANY, INC. (Facility 1)

Policy Revision 3 (September 2011)

Case ID No. 45360

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101616779

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

Recommended reduction due to high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 15-Nov-2012

Docket No. 2012-2213-PST-E

PCW

Respondent MCLANE COMPANY, INC. (Facility 1)

Policy Revision 3 (September 2011)

Case ID No. 45360

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101616779

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the annual line leak detector and piping tightness tests were not conducted.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential	x		

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix
Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

15 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

One monthly event is recommended from the October 31, 2012 record review date to the November 15, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

x

(mark with x)

Notes

The Respondent came into compliance on December 31, 2013, after the December 13, 2012 Settlement Offer.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$204

Violation Final Penalty Total \$6,839

This violation Final Assessed Penalty (adjusted for limits) \$6,839

Economic Benefit Worksheet

Respondent MCLANE COMPANY, INC. (Facility 1)

Case ID No. 45360

Reg. Ent. Reference No. RN101616779

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	26-Jan-2012	31-Dec-2012	0.93	\$70	n/a	\$70

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs at the Facility. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$118	26-Jan-2011	6-Nov-2012	2.70	\$16	\$118	\$134
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual line leak detector and piping tightness testing. The date required is one year prior to the investigation date and the final date is the date of compliance.

Approx. Cost of Compliance **\$1,618**

TOTAL **\$204**

Screening Date 15-Nov-2012

Docket No. 2012-2213-PST-E

PCW

Respondent MCLANE COMPANY, INC. (Facility 1)

Policy Revision 3 (September 2011)

Case ID No. 45360

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101616779

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)(1)(B)

Violation Description Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			
	x		

Percent 15.0%

Matrix Notes

100% of the requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent came into compliance on January 28, 2013, after the December 13, 2012 Settlement Offer.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

\$3,420

This violation Final Assessed Penalty (adjusted for limits) \$3,420

Economic Benefit Worksheet

Respondent MCLANE COMPANY, INC. (Facility 1)
Case ID No. 45360
Reg. Ent. Reference No. RN101616779
Media Petroleum Storage Tank
Violation No. 2

Percent Interest 5.0
Years of Depreciation 15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	26-Jan-2013	28-Jan-2013	0.01	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. The date required is the investigation date, and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$0



Compliance History Report

PENDING Compliance History Report for CN602411332, RN101616779, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN602411332, MCLANE COMPANY, INC.

Classification: HIGH

Rating: 0.00

Regulated Entity: RN101616779, McLane Southwest

Classification: UNCLASSIFIED

Rating: -----

Complexity Points: 3

Repeat Violator: NO

CH Group: 14 - Other

Location: 2828 INDUSTRIAL BLVD TEMPLE, TX 76504-1000, BELL COUNTY

TCEQ Region: REGION 09 - WACO

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION

STORMWATER PERMIT TXR05K249

REGISTRATION 47270

USED OIL EPA ID WAU00016

Compliance History Period: September 01, 2007 to August 31, 2012

Rating Year: 2012

Rating Date: 09/01/2012

Date Compliance History Report Prepared: November 15, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 15, 2007 to November 15, 2012

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Herbert Darling

Phone (512) 239-2570

Site and Owner/Operator History:

- | | |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |
| 3) If YES for #2, who is the current owner/operator? | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)? | N/A |
| 5) If YES, when did the change(s) in owner or operator occur? | N/A |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	22-Oct-2012	Screening	30-Oct-2012	EPA Due	
	PCW	11-Feb-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	MCLANE COMPANY, INC. (Facility 2)		
Reg. Ent. Ref. No.	RN101435717		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	45360	No. of Violations	1	
Docket No.	2012-2213-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Had Darling	
		EC's Team	Enforcement Team 7	
Admin. Penalty \$ Limit Minimum		\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	-10.0% Reduction	Subtotals 2, 3, & 7	-\$375
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Notes Reduction due to high performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$375
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$59		
Approx. Cost of Compliance	\$1,500		

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$3,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,000
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DEFERRAL	20.0% Reduction	Adjustment	-\$600
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,400
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Screening Date 30-Oct-2012

Docket No. 2012-2213-PST-E

PCW

Respondent MCLANE COMPANY, INC. (Facility 2)

Policy Revision 3 (September 2011)

Case ID No. 45360

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101435717

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

Reduction due to high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 30-Oct-2012

Docket No. 2012-2213-PST-E

PCW

Respondent MCLANE COMPANY, INC. (Facility 2)

Policy Revision 3 (September 2011)

Case ID No. 45360

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101435717

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to monitor the underground storage tank ("UST") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent

15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants that would exceed levels protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

13

Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty

\$3,750

One monthly event is recommended from the October 17, 2012 record review date to the October 30, 2012 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$375

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent came into compliance on November 7, 2012, before the December 13, 2012 Settlement Offer.

Violation Subtotal \$3,375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$59

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

Economic Benefit Worksheet

Respondent MCLANE COMPANY, INC. (Facility 2)

Case ID No. 45360

Reg. Ent. Reference No. RN101435717

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	26-Jan-2012	7-Nov-2012	0.78	\$59	\$59

Notes for DELAYED costs

Estimated cost to implement a release detection method for the UST at the Facility. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$59



Compliance History Report

PENDING Compliance History Report for CN602411332, RN101435717, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN602411332, MCLANE COMPANY, INC.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101435717, McLane Southwest Center Street	Classification: HIGH	Rating: 0.00
Complexity Points:	2	Repeat Violator:	NO
CH Group:	14 - Other		
Location:	3010 CENTER ST TEMPLE, TX 76503, BELL COUNTY		
TCEQ Region:	REGION 09 - WACO		
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 20821 STORMWATER PERMIT TXR05U550		
Compliance History Period:	September 01, 2007 to August 31, 2012	Rating Year: 2012	Rating Date: 09/01/2012
Date Compliance History Report Prepared:	October 30, 2012		
Agency Decision Requiring Compliance History:	Enforcement		
Component Period Selected:	October 30, 2007 to October 30, 2012		
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.			
Name:	Herbert Darling	Phone	(512) 239-2570

Site and Owner/Operator History:

- | | |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |
| 3) If YES for #2, who is the current owner/operator? | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)? | N/A |
| 5) If YES, when did the change(s) in owner or operator occur? | N/A |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Pending Compliance History Report for CN602411332, RN101435717, Rating Year 2012 which includes Compliance History (CH) components from October 30, 2007, through October 30, 2012.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MCLANE COMPANY, INC.
RN101616779 AND
RN101435717**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2012-2213-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding MCLANE COMPANY, INC. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates the following two fleet refueling facilities (collectively referred to as the "Facilities"):
 - a. McLane Southwest, RN101616779, ("Facility 1"), located at 2828 Industrial Boulevard, Temple, Bell County, Texas, has four underground storage tanks ("USTs"); and
 - b. McLane Southwest Center Street, RN101435717, ("Facility 2"), located at 3010 Center Street, Temple, Bell County, Texas has one UST.
2. The Respondent's five USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 22, 2012 and November 5, 2012.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirteen Thousand Two Hundred Fifty-Nine Dollars (\$13,259) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Ten Thousand Six Hundred Eight Dollars (\$10,608) of the administrative penalty and Two Thousand Six Hundred Fifty-One Dollars (\$2,651) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facilities:
 - a. Implemented a release detection method for the USTs at Facility 1 on December 31, 2012 and Facility 2 on November 7, 2012;
 - b. Conducted the required annual piping tightness and line leak detector tests at Facility 1 on November 6, 2012, with passing results; and
 - c. Began maintaining UST records at Facility 1 on January 28, 2013.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facilities, the Respondent is alleged to have:

1. At Facility 1:
 - a. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on January 26, 2012, and a record review conducted on October 31, 2012;
 - b. Failed to provide release detection for the pressurized piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on January 26, 2012, and a record review conducted on October 31, 2012. Specifically, the annual line leak detector and piping tightness tests were not conducted; and
 - c. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(B), as documented during an investigation conducted on January 26, 2012, and a record review conducted on October 31, 2012.
2. At Facility 2:
 - a. Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on January 26, 2012, and a record review conducted October 17, 2012.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: MCLANE COMPANY, INC., Docket No. 2012-2213-PST-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facilities operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

4/25/13

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

2/28/13

Date

SCOTT BRADEN

Name (Printed or typed)
Authorized Representative of
MCLANE COMPANY, INC.

DIVISION PRESIDENT

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.